IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 817 of 2006

IN

NOTICE OF MOTION NO. 1341 OF 2005

IN

SUIT NO. 1223 OF 2005

Madhusudan Chhabildas Sanghvi..... Appellant.

Versus

M/s.Mukta Construction & Ors.... .. Respondents.

Mr. D. H. Mehta a/w Mr. S.B.Amin
for the Appellant.

Mr.Nitin Thakkar a/w Ms.Madhavi Divan i/by
M/s.Mahesh Jani & Co. for Respondent Nos.1 to 5.

Mr.Ranjit Shetty i/by M/s.PDS Legal for
Respondent Nos.6 to 10.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 5TH DECEMBER, 2006.

P.C.:

We heard the Counsel for the parties.

2. Admit.

3. Appeal is heard finally at this stage.

4. An agreement for sale by itself does not create any right, title or interest in the property. Assuming that the plaintiffs have been able to establish prima facie case in their favour and that balance of convenience is also in favour of the plaintiffs, in our considered view the order in terms of prayers (a) and (e) of the notice of motion fully secures the interest of the plaintiffs during the pendency of the suit. As a matter of fact, grant of prayer (d) of the notice of motion would virtually tantamount to granting the decree for specific performance without any trial, which in our view just could not be granted.

5. In view of the prayer (e), as a matter of fact, relief in terms of prayer clause (b) is also unnecessary.

6. If the defendants are restrained during the pendency of suit from in any manner dealing with, disposing of, encumbering or creating third party rights and the possession said to have been handed over to the plaintiffs pursuant to the agreement for

sale is protected, the plaintiffs' rights during the pendency of the suit are fully protected.

7. We, accordingly, allow the appeal in part and confirm the order of the learned Motion Judge in so far as grant of interim relief in terms of prayer clauses (a) and (e) of the notice of motion are concerned. The interim order granted in terms of prayer clauses (b) and (d) are set aside.

8. Order accordingly.

9. No costs.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)